

- 10 -

REMARKS

The Examiner has rejected Claims 2-10 under 35 U.S.C. 101 as being directed toward non-statutory subject matter. Such rejection is deemed moot by virtue of the claim clarifications made hereinabove.

The Examiner has rejected Claim 32 under 35 U.S.C. 112, first paragraph, for failing to comply with the enablement requirement. Applicant respectfully asserts that applicant's specification on page 8, line 32 to page 9, line 3 discloses and enables applicant's claimed technique "wherein each destination computer stores said priority data thereof specifying said priority level associated with said destination computer and communicates said priority data thereof with said source computer in response to a first connection with said source computer" (see Claim 32). Note such excerpt from the specification below.

"Alternatively, it is possible that each connected destination computer may store its own priority level and communicate this dynamically to the source computer when it first connects to the source computer as it boots up. It is also possible that when an update is required the source computer could poll the destination computers for their priority level, although this might in itself generate an excessive degree of network traffic that would be better avoided at a critical time." (Specification, Page 8, line 32 to Page 9, line 3 - emphasis added)

The Examiner has further rejected Claims 1, 3-11, 13-20, 31, and 32 under 35 U.S.C. 112, second paragraph, for being indefinite. Such rejection is deemed avoided in view of the amendments made to the relevant independent claims.

The Examiner has maintained the rejection of the claims. As set forth below, such rejection is still deficient. However, despite such deficiencies and in the spirit of expediting the prosecution of the present application, applicant has incorporated the subject matter of at least one dependent claim into each of the independent claims. Since the Examiner already considered the subject matter of such dependent claim(s), it is asserted that such claim amendments would not require new search and/or consideration.

- 11 -

The Examiner has rejected Claims 1, 3-5, 11, 13-15, 21, 23-25, 31, and 32 under 35 U.S.C. 103(a) as being unpatentable over Hodges et al. (U.S. Patent No. 6,035,423) in view of Reber et al. (U.S. Patent No. 6,484,943) in view of Theimer et al. (U.S. Patent No. 6,557,111). In addition, the Examiner has rejected Claims 6-8, 16-18, and 26-28 under 35 U.S.C. 103(a) as being unpatentable over Hodges in view of Reber in view of Theimer in further view of Dennis et al. (U.S. Patent No. 6,466,932). Applicant respectfully disagrees with such rejections, especially in view of the amendments made hereinabove to the independent claims. Specifically, applicant has amended the independent claims to at least substantially include the subject matter of former dependent Claims 6-8 et al.

With respect to the independent claims, the Examiner has relied on the following excerpts from the above references to make a prior art showing of applicant's claimed "establishing code operable in dependence upon said priority data to establish a plurality of groups of destination computers such that destination computers within a group of destination computers share a common priority level" (see this or similar, but not necessarily identical language in the independent claims).

- 12 -

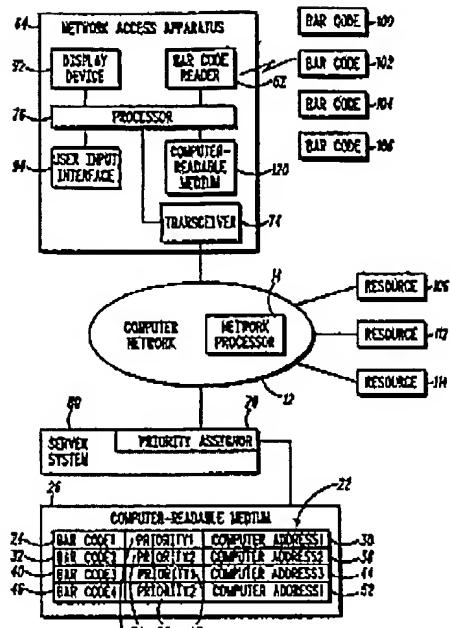


FIG. 2

(Reber, Figure 2)

"For purposes of illustration and example, the computer-readable medium 20 comprises computer-readable data 22 which associates a bar code data element 24 with a priority level 26 and a computer address 30, a bar code data element 32 with a priority level 34 and a computer address 36, a bar code data element 40 with a priority level 42 and a computer address 44, and a bar code data element 46 with a priority level 50 and a computer address 52. Typically, the computer-readable medium 20 embodies computer-readable data associating a multiplicity of bar code data elements (i.e. many more than four) with a multiplicity of respective priority levels and a multiplicity of respective computer addresses.

Also for purposes of illustration and example, consider the priority levels 26 and 42 to be the same, the priority levels 34 and 50 to be the same, and the priority levels 26 and 42 to differ from the priority levels 34 and 50. Although only two different priority levels are illustrated, it is noted that the present disclosure contemplates use of any plurality of different priority levels." (Reber, Col. 2, lines 45-64 - emphasis added)

Applicant respectfully asserts that such excerpts from Reber relied upon by the Examiner simply teach "computer readable data associating a multiplicity of bar code data elements (i.e. many more than four) with a multiplicity of respective priority levels and a multiplicity of respective computer addresses." Reber further discloses a technique

- 13 -

to "consider the priority levels 26 and 42 to be the same, the priority levels 34 and 50 to be the same, and the priority levels 26 and 42 to differ from the priority levels 34 and 50" (emphasis added). However, disclosing different priority levels fails to rise to the level of specificity of applicant's "establishing code operable in dependence upon said priority data to establish a plurality of groups of destination computers such that destination computers within a group of destination computers share a common priority level" (emphasis added), as claimed.

In the latest Office Action dated 02/24/2006, the Examiner has argued that "Hodges further teaches the use of IP address assigned to each local computers" and "Reber teaches assigning a priority to each address." The Examiner then argues that "[t]he combination of Reber and Hodges teaches assigning priority to computers" (emphasis added). However, simply assigning priority to computers fails to meet the level of specificity of applicant's technique for providing "a group of destination computers shar[ing] a common priority level" (emphasis added), as claimed. There simply is no disclosure in the combined excerpts from Hodges and Reber for the use of groups "shar[ing] a common priority level" (emphasis added), as claimed.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

Applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above. Nevertheless, despite

- 14 -

such deficiencies and in the spirit of expediting the prosecution of the present application, applicant has incorporated the subject matter of Claims 6-8 et al. into each of the independent claims.

With respect to the subject matter of former Claim 6 et al. (now at least substantially incorporated into the independent claims), the Examiner has relied on the excerpt below from the Dennis reference to make a prior art showing of applicant's claimed technique "wherein, if any group of destination computers includes more than a threshold number of destination computers sharing a common priority level, then said establishing code is operable to split said group to form a plurality of groups of destination computers from said destination computers sharing a common priority level and said ordering code is operable to order corresponding push update tasks to occur sequentially despite sharing said common priority level" (see this or similar, but not necessarily identical language in the independent claims).

"Further, policy may be enforced for certain users and suggested for other users by splitting a groups policies into two groups, (e.g., Ae and A), and then using security access control to select which users in that group get which policy." (Dennis, Col. 13, lines 32-35 - emphasis added)

Applicant respectfully asserts that such excerpt from Dennis relied upon by the Examiner merely teaches that a "policy may be enforced for certain users and suggested for other users by splitting a groups policies into two groups, (e.g., Ae and A)" (emphasis added). However, simply disclosing that a group may be split into two groups to enforce and suggest policy fails to disclose a technique where "if any group of destination computers includes more than a threshold number of destination computers sharing a common priority level, then said establishing code is operable to split said group to form a plurality of groups of destination computers from said destination computers sharing a common priority level" (emphasis added), as claimed by applicant. Also, the teachings of the Dennis excerpt fail to disclose a technique where "ordering code is operable to order corresponding push update tasks to occur sequentially despite sharing said common priority level" (emphasis added), as claimed by applicant.

- 15 -

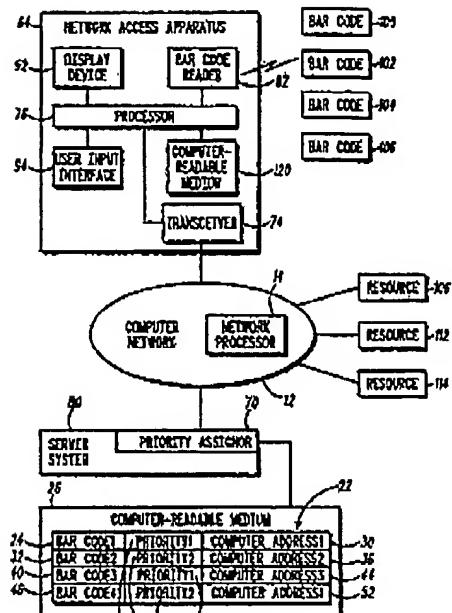
Furthermore, with respect to the subject matter of former Claim 7 et al. (now at least substantially incorporated into the independent claims), the Examiner has relied the excerpt below from Dennis to make a prior art showing of applicant's claimed technique "wherein said splitting allocates destination computers sharing a common network portion of said computer network to a common group" (see this or similar, but not necessarily identical language in the independent claims).

"Further, policy may be enforced for certain users and suggested for other users by splitting a groups policies into two groups, (e.g., Ae and A), and then using security access control to select which users in that group get which policy." (Dennis, Col. 13, lines 32-35 - emphasis added)

Applicant respectfully asserts that such excerpt from Dennis relied upon by the Examiner simply teaches a technique of "splitting a groups policies into two groups, (e.g., Ae and A)." However, the Dennis excerpt simply fails to disclose how the groups are split. Thus, such excerpt from Dennis fails to meet applicant's technique "wherein said splitting allocates destination computers sharing a common network portion of said computer network to a common group" (emphasis added), as claimed.

Moreover, with respect to the subject matter of former Claim 8 et al. (now at least substantially incorporated into the independent claims), the Examiner has relied on at least some of the excerpts below from Reber to make a prior art showing of applicant's claimed technique "wherein within said group of destination computers sharing a common priority level and being split, destination computers connected and not logged into said computer network are grouped together and split from and treated as having a lower priority level than destination computers connected and logged into said computer network" (see this or similar, but not necessarily identical language in the independent claims).

- 16 -

**FIG. 2**

(Reber, Figure 2)

"For purposes of illustration and example, the computer-readable medium 20 comprises computer-readable data 22 which associates a bar code data element 24 with a priority level 26 and a computer address 30, a bar code data element 32 with a priority level 34 and a computer address 36, a bar code data element 40 with a priority level 42 and a computer address 44, and a bar code data element 46 with a priority level 50 and a computer address 52. Typically, the computer-readable medium 20 embodies computer-readable data associating a multiplicity of bar code data elements (i.e. many more than four) with a multiplicity of respective priority levels and a multiplicity of respective computer addresses.

Also for purposes of illustration and example, consider the priority levels 26 and 42 to be the same, the priority levels 34 and 50 to be the same, and the priority levels 26 and 42 to differ from the priority levels 34 and 50. Although only two different priority levels are illustrated, it is noted that the present disclosure contemplates use of any plurality of different priority levels." (Reber, Col. 2, lines 45-64 - emphasis added)

"The priority assignor 70 is capable of matching received bar code data with bar code data elements stored by the computer-readable medium 20. Using the aforementioned capability, the priority assignor 70 is capable of determining which priority level is associated with the received bar code data, and optionally which computer address is associated with the received bar code data." (Reber, Col. 3, lines 55-61 - emphasis added)

- 17 -

Applicant respectfully asserts that such excerpts from Reber relied upon by the Examiner simply teach "computer readable data associating a multiplicity of bar code data elements (i.e. many more than four) with a multiplicity of respective priority levels and a multiplicity of respective computer addresses" (emphasis added). Reber further teaches a technique where "the priority assignor 70 is capable of determining which priority level is associated with the received bar code data, and optionally which computer address is associated with the received bar code data" (emphasis added).

However, there is simply not even a suggestion in the Reber excerpts for a technique where "destination computers connected and not logged into said computer network are grouped together and split from and treated as having a lower priority level than destination computers connected and logged into said computer network" (emphasis added), as claimed by applicant. Reber's "computer-readable data" is used to associate barcodes, priority levels, and computer addresses. There is simply no disclosure in such excerpts for a technique where "destination computers connected and not logged into said computer network are grouped together and split from and treated as having a lower priority level" (emphasis added), as claimed by applicant.

Applicant further notes that the prior art is also deficient with respect to the dependent claims. For example, with respect to Claims 3, 13, and 23, the Examiner has relied on Figures 1-12 in Hodges to make a prior art showing of applicant's claimed technique "wherein said computer network uses an IP transmission protocol and said multicast messages are IP multicast messages." See the excerpts below.

- 18 -

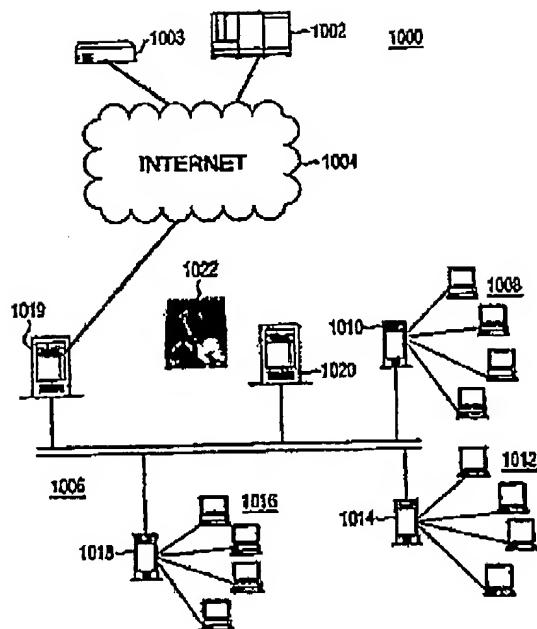


FIG. 10

(Hodges, Figure 10)

"According to a preferred embodiment, service computer 1020 is loaded with a group update agent software package capable of (a) automatically receiving antivirus software updates for a variety of client computers on the corporate network 1006 according to a push technology method, and (b) automatically distributing the antivirus updates to the respective client computers, in a manner which is transparent to both the system administrator 1022 and to the users of the client computers. Advantageously, the most recent antivirus software is distributed to the client computers on corporate network 1006 without the need for affirmative action by the system administrator 1022. This can advantageously lead to increased efficiency, lower costs, and reduced human errors, while at the same time increasing client computer integrity and network efficiency." (Hodges, Col. 11, lines 58-67 - emphasis added)

"At step 1204, service computer 1020 receives antivirus updates, if any are required, from the central antivirus server 1002. At step 1206, the service computer automatically distributes the antivirus updates, if any are received, to the appropriate client computers. Advantageously, an automated network installation scripting procedure, such as ISEAMLESS.TM. from McAfee Associates, is used to distribute and install the antivirus updates. This allows for a minimum of intervention, if any, by system administrator 1022, thus allowing for increased efficiency and enhanced antivirus protection of the corporate network 1006 with the most up to date antivirus information available from central antivirus server 1002. If no updates are sent, service

- 19 -

computer 1020 pauses at step 1208, and then steps 1202 to 1204 are repeated." (Hodges, Col. 12, lines 29-45 - emphasis added)

Applicant respectfully asserts that the figures and excerpts from Hodges merely teach that "service computer 1020 is loaded with a group update agent software package." Hodges further teaches that the service computer is utilized for "automatically distributing the antivirus updates to the respective client computers, in a manner which is transparent to both the system administrator 1022 and to the users of the client computers" (emphasis added). Hodges continues to teach that the service computer utilizes "an automated network installation scripting procedure ... to distribute and install the antivirus updates" (emphasis added). However, there simply is no disclosure in the Hodges excerpts that even suggests a technique of distributing updates utilizing "an IP transmission protocol and said multicast messages are IP multicast messages" (emphasis added), as claimed by applicant.

Again, applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above. Thus, a notice of allowance or specific prior art showing of each of the foregoing claim elements, in combination with the remaining claimed features, is respectfully requested

Thus, all of the independent claims are deemed allowable. Moreover, the remaining dependent claims are further deemed allowable, in view of their dependence on such independent claims.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 505-5100. The

- 20 -

Commissioner is authorized to charge any additional fees or credit any overpayment to
Deposit Account No. 50-1351 (Order No. NAIIP483).

Respectfully submitted,
Zilka-Kotab, PC.

Kevin J. Zilka
Registration No. 41,429

P.O. Box 721120
San Jose, CA 95172-1120
408-505-5100